

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

AGENCY ONE INSURANCE, INC.,  
PAMELA A SIROKY, METROPOLITAN  
PROPERTY AND CASUALTY  
INSURANCE COMPANY, Assignee of the  
Claims of Agency One Insurance, Inc. and  
Pamela A. Siroky;

Plaintiffs,

vs.

WESTPORT INSURANCE CORP.,

Defendant.

**8:13CV78**

**ORDER**

As to Defendant Westport Insurance Corp.'s motion to compel, (Filing No. 136):

1) The court has reviewed the document withheld by MetLife (MET000031) and at this time, finds the document is an attorney-client communication for which the privilege has not been waived.

2) At the court's request, David Dudley submitted to the court the documents withheld as identified on his privilege log and finds:

a. After reviewing the documents the defendant intends to use during depositions of Mr. Phillips and Mr. Dudley,<sup>1</sup> and comparing them to the documents withheld by Mr. Dudley, it is clear that the defendant has already received nearly all the documents from another source.

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<sup>1</sup> Those documents were emailed to me today by the deposing counsel.

- b. Of those documents which the defendant has not yet received, the attached pages are attorney-client communications, but do not provide legal advice and do not include work product.<sup>2</sup>
- c. The document identified as email correspondence between Randall Goyette and David Dudley dated May 7, 2014 is wholly irrelevant to the claims in this case.
- d. The document, identical to MET000031, is an attorney-client communication for which the privilege has not been waived.

April 14, 2015.

BY THE COURT:

*s/ Cheryl R. Zwart*  
United States Magistrate Judge

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<sup>2</sup> Note: The court has redacted the portion of these documents identifying Mr. Dudley's communications with his staff regarding whether the document should be listed on the privilege log.

**From:** Pam Siroky [<mailto:pam@agencyonedc.com>]  
**Sent:** Friday, May 02, 2014 11:42 AM  
**To:** Doug Phillips  
**Cc:** Donna Poznanski; David A. Dudley  
**Subject:** Re: Met v. Agency One

Thank you. I am ready to move on. Have a good weekend too.

On May 2, 2014 11:05 AM, Doug Phillips <[Phillips@klasslaw.com](mailto:Phillips@klasslaw.com)> wrote:

John Gray just gave me the good news that he and David have worked out the details to resolve the Sioux City case. Obviously, there will not be a trial at the end of the month. I will wait until John and David get the paperwork done and signed and then John and I will get the case here dismissed and we will be done. Have a great weekend!

Douglas L. Phillips  
Klass Law Firm, L.L.P.  
4280 Sergeant Road  
Mayfair Center, Suite 290  
Sioux City, IA 51106  
712-252-1866 ext. 230  
[phillips@klasslaw.com](mailto:phillips@klasslaw.com)  
[www.klasslaw.com](http://www.klasslaw.com)

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**AGREEMENT**

WHEREAS, Pamela A. Siroky, the owner and an agent for Agency One Insurance, Inc. (Agency One) and Agency One are named Defendants by Metropolitan Property and Casualty Insurance Company (MET PC) in *Metropolitan Property and Casualty Insurance Company v. Agency One Insurance, Inc. and Pamela A. Siroky* (C12-4050-LTS) in the United States District Court for the Northern District of Iowa;

WHEREAS, the trial in the matter is set for May 27, 2014;

WHEREAS, Pamela A. Siroky, Agency One and MET PC desire to fully settle all claims which MET PC may have or had, against Pamela A. Siroky and Agency One in the issuance of MET PC Policy 0930727292 to Patricia Potter; and

WHEREAS, all parties agree that Agency One was negligent in the binding and issuing of MET PC policy 0930727292 to Patricia Potter; and

WHEREAS, Westport Insurance Company (Westport) has refused to provide a defense or indemnity to Pamela A. Siroky or Agency One for the claims made against them by MET PC:

THEREFORE, Pamela A. Siroky and Agency One and their successors, heirs, and assigns do hereby voluntarily acknowledge and agree with MET PC as follows :

1. In exchange for due consideration provided to Pamela A. Siroky and Agency One, Pamela A. Siroky and Agency One hereby expressly assign all rights, claims, interests, and causes of action held by them or either of them pursuant to Westport Insurance Company (Westport) (policy WED4ME006184505) and, in particular, Westport's refusal to defend and indemnify Siroky and Agency One for the claims and causes of action that were made against them by MET PC in a lawsuit entitled, *Metropolitan Property Casualty Insurance Company v.*

*Agency One Insurance, Inc., and Pamela A. Siroky* (C12-4050-LTS) in the United States District Court for the Northern District of Iowa.

2. These rights, claims, interests and causes of action include, but are not limited to, any claims for breach of contract, bad faith, breach of warranty of an implied duty of good faith and fair dealing, and breach of fiduciary duty.

3. Pamela A. Siroky and Agency One hereby grant MET PC the right to join in any pending litigation in the United States District Court for Nebraska they now have or also to initiate an action against Westport, and any right to file, in their name, an action against Westport for breach of its obligations and duties owed to Pamela A. Siroky or Agency One under policy WED4ME006184505.

4. In further consideration of this assignment MET PC expressly agrees to refrain from executing on or in any manner seeking to enforce the judgment against Pamela A. Siroky and Agency One entered in the United States District Court for the Northern District of Iowa in the matter of (C12-4050-LTS).

5. MET PC further agrees to refrain from in any manner seeking to enforce said judgment against Pamela A. Siroky and Agency One.

6. It is agreed by the parties that this Agreement will remain in force and in effect notwithstanding any judgment, order, decision, or result in any suit filed by MET PC, Pamela A. Siroky, Agency One, or their successors heirs or assigns against Westport.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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Charlie Cavas  
MetLife Auto & Home  
P. O. Box 410250  
Charlotte, NC 28241

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Pamela A. Siroky, on her own behalf  
And as President of Agency One Insurance

**From:** Pam Siroky [<mailto:pam@agencyonedc.com>]  
**Sent:** Tuesday, June 17, 2014 8:01 AM  
**To:** David A. Dudley  
**Subject:** RE: Agreement with revisions (00509054xB7457)

What is a good time to talk?

Pam Siroky  
**Agency One Insurance**  
**594 N 4th Street**  
**David City, NE 68632**  
**402-367-3177**  
**fax 402-367-3653**

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**From:** David A. Dudley [<mailto:DDudley@baylorevnen.com>]  
**Sent:** Monday, June 16, 2014 5:08 PM  
**To:** Pam Siroky  
**Subject:** Agreement with revisions (00509054xB7457)

Pam

Attached is the agreement with Met PC. Call me when you get a chance.

David Dudley  
Baylor, Evnen, Curtiss, Grimit & Witt, LLP  
Wells Fargo Center  
1248 O Street, Suite 600  
Lincoln, Nebraska 68508-1499  
402.475.1075  
[ddudley@baylorevnen.com](mailto:ddudley@baylorevnen.com)



Emily G Morgan | Legal Admin. Associate II | MetLife Auto & Home | 700 Quaker Lane, Warwick, RI 02887 | Tel: 401-827-2527

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**From:** Pam Siroky [<mailto:pam@agencyonedc.com>]

**Sent:** Tuesday, June 17, 2014 5:09 PM

**To:** David A. Dudley

**Subject:** RE: Agreement

Here you go. It will probably be best to just schedule a time to meet. We are crazy busy here and if mother nature keeps throwing tantrum's it is not going to get any better. Later in the day seems to work best for me and Mondays and Wednesdays are out because of kids ball games. If you guys want to throw out some dates and times I will just make it work. I will wait to hear back from one of you. Thank you!! Have a good evening!!!

Pam Siroky

**Agency One Insurance**

**594 N 4th Street**

**David City, NE 68632**

**402-367-3177**

**fax 402-367-3653**

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**From:** David A. Dudley [<mailto:DDudley@baylorevnen.com>]

**Sent:** Tuesday, June 17, 2014 4:55 PM

**To:** Pam Siroky

**Cc:** Win C. Lombardi

**Subject:** Fwd: Agreement

Pam

Attached to this email is the agreement signed by Chuck. Go ahead and print the attachment and then sign where indicated.

I have talked to Chris Miller a couple of times today. He is making arrangements to review documents. He's already reviewed most of the depositions. During my conversation, he indicated that in the fairly near future, he would like to sit down and meet you. I suggested that at some point, we could initially meet together and I could introduce you. If you're going to be in Lincoln in the next several days, maybe there would be an opportunity to conference. Let me know if you have questions or concerns.

David Dudley

Sent from my iPhone

Begin forwarded message:

**From:** John Gray <[John.Gray@heidmanlaw.com](mailto:John.Gray@heidmanlaw.com)>  
**Date:** June 17, 2014, 4:30:14 PM CDT  
**To:** "David A. Dudley" <[DDudley@baylorevnen.com](mailto:DDudley@baylorevnen.com)>  
**Cc:** John Gray <[John.Gray@heidmanlaw.com](mailto:John.Gray@heidmanlaw.com)>  
**Subject: FW: Agreement**

FYI.

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**From:** Morgan, Emily [<mailto:emorgan3@metlife.com>]  
**Sent:** Tuesday, June 17, 2014 3:24 PM  
**To:** John Gray; [Chris@millergrrell.com](mailto:Chris@millergrrell.com)  
**Cc:** Cavas, Charles  
**Subject:** Agreement

On behalf of Chuck Cavas, please find the attached agreement.

Thank you,

Emily G Morgan | Legal Admin. Associate II | MetLife Auto & Home | 700 Quaker Lane, Warwick, RI 02887 | Tel: 401-827-2527

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